

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PURE HERBS, LTD., a Michigan
corporation,

Plaintiff,

vs.

ANTHONY CALPENNO, a resident of
Washington; and SOUND HEALING ARTS,
PC, a Washington professional corporation,
jointly and severally,

Defendants.

NO. _____

**COMPLAINT FOR TRADEMARK
INFRINGEMENT, CYBER-
SQUATTING, BREACH OF THE
WASHINGTON STATE CONSUMER
PROTECTION ACT, and INJUNCTIVE
RELIEF**

JURY TRIAL DEMAND

Plaintiff Pure Herbs, Ltd., for its Complaint, states as follows:

PARTIES AND JURISDICTION

1. Plaintiff Pure Herbs, Ltd. is a Michigan corporation with its principal place of business at 33410 Sterling Ponds Blvd., Sterling Heights, MI 48312. Plaintiff has been and is engaged in the business of developing, manufacturing, marketing, promoting, selling and distributing various herbal products for health and nutritional purposes. Plaintiff sells and distributes its products under the trademarks Pure Herbs, Ltd.[®] or Pure Herbs[™] to over 7,300 distributors throughout North America who, in turn, sell these herbal products directly to the customer.



1 7. A certified copy of Registration No. 1840708 and a separate printout of the
2 registration that is available online through the United States Patent and Trademark Electronic
3 Search System are attached to this Complaint as Exhibit A.

4 8. Since 1982, Plaintiff has manufactured, marketed, promoted and distributed
5 over 140 processed herbal products used to develop and promote better health via the
6 naturopathic medicine philosophy. Naturopathic medicine is a distinctly natural approach to
7 health and healing that recognizes the integrity of the whole person and emphasizes the
8 treatment of physical disorders through the enhancement and support of the inherent healing
9 capacity of the individual. Plaintiff has promoted its products to support the body's ability to
10 restore, maintain and improve health through the use of processed herbs.

11 9. Plaintiff promotes, markets and sells its products through a broad base of over
12 7,300 distributors throughout North America, and through the internet. In addition, Plaintiff
13 distributors actively engage in promoting, marketing and advertising the Pure Herbs, Ltd.[®]
14 products through their own websites, seminars, promotional information, brochures and the
15 like, using (under license) the trademark Pure Herbs, Ltd.[®] and/or Pure Herbs[™].

16 10. Plaintiff has spent a considerable amount of time and money over the years in
17 the promotion and development of a distributor network and holds numerous seminars,
18 disseminates technical publications, provides naturopathic guidance and counseling. Since
19 October 1997, Plaintiff has registered and maintained a website which is identified by the
20 domain name and url "www.pureherbs.com." These efforts were all made and undertaken to
21 promote products sold under the trademarks Pure Herbs, Ltd.[®] and Pure Herbs[™]. As a result
22 of these efforts, the company's sales and distribution network has grown substantially since it
23 first started operating under the trademark of Pure Herbs, Ltd.[®]

24 11. In promoting and marketing its products, Plaintiff consistently relies on and
25 uses the distinctive Pure Herbs, Ltd.[®] and Pure Herbs[™] trademarks and has spent substantial
26



1 sums of money to promote and advertise the quality and benefits of its herbal products and to
2 foster goodwill in association with its products.

3 12. On or about December 2009, Plaintiff became aware of an infringing activity
4 on its trademarks by the Defendants. Defendants are marketing and distributing herbal
5 products that are the same or are similar-type products manufactured, marketed, distributed
6 and sold by Plaintiffs, in the same or similar trade channels, to the same population of
7 consumers.

8 13. On December 22, 2009, Plaintiff authorized its counsel to send a “cease and
9 desist” letter, via certified mail, return receipt requested, to Dr. Anthony Calpeno.

10 14. A true and correct copy of the Plaintiff’s “cease and desist” letter is attached
11 to this Complaint as Exhibit B. A true and correct copy of the executed return receipt,
12 indicating that the letter was signed for by Linda Jury, is attached to this Complaint as
13 Exhibit C.

14 15. Despite being notified of the infringing nature of their use of the Plaintiff’s
15 trademarks, Defendants continue to operate their website (www.pureherbs.info) under the
16 trademark “Pure Herbs” and to sell products under that name, and under the name
17 “pureherbs.info.”

18 16. True and correct copies of excerpts from Defendants’ website are attached to
19 this Complaint as Exhibit D and Exhibit E.

20 17. As can be seen from Exhibits D and E, Defendants actively advertise and
21 promote their business and products under the words “Pure Herbs,” even to the point of
22 attempting to copyright the materials under the heading “Copyright 2005-2009 Pure Herbs.”
23 The herbal products sold by Defendants are the same or are similar to those being distributed
24 and sold by Plaintiff.
25
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1 18. On information and belief, Defendants first registered their domain name
2 “pureherbs.info” on December 11, 2004. This date is well over twenty years after Plaintiff’s
3 trademark registration for Pure Herbs, Ltd.® was issued.

4 19. A true and correct copy of the printout from Network Solutions’s “Who Is”
5 domain name registry, indicating December 11, 2004 as the date the Defendants’ domain
6 name was created, is attached to this Complaint as Exhibit F.

7 20. Defendants are placing the words “Pure Herbs” and “pureherbs.info” on their
8 products, and using the words “Pure Herbs” and “pureherbs.info” as trademarks in interstate
9 commerce.

10 21. Plaintiff’s agent James Jacobs purchased products from Defendants in
11 February 2010. Defendants issued an invoice to Mr. Jacobs under the name “Pure Herbs.”
12 Defendants issued a refund check to Mr. Jacobs from a checking account displaying the
13 names “Sound Healing Arts, P.C.” and “Dr. Anthony Calpeno.” The “Pure Herbs” invoice,
14 the pureherbs.info website, and the refund check all use the same street and mailing addresses.

15 22. True and correct copies of photographs of the products purchased from
16 Defendants by Mr. Jacobs are attached to this Complaint as Exhibit G and Exhibit H.

17 23. A true and correct copy of Defendants’ invoice is attached to this Complaint
18 as Exhibit I.

19 24. A true and correct copy of the refund check issued by Defendants to Mr.
20 Jacobs is attached to this Complaint as Exhibit J.

21 25. Defendants’ use of “Pure Herbs” and “pureherbs.info” as trademarks on and
22 in connection with their herbal products and in their advertising, promotional materials and
23 website, is likely to cause confusion and/or mistake among members of the public as to the
24 source or origin of the Defendants’ products, due to the exact same spelling, sound, meaning,
25 and appearance of the Defendants’ trademarks when compared to the Plaintiff’s registered
26 and common law trademarks.



1 North America, is in full force and effect, and has become incontestable under the Lanham
2 Act. This mark was first used by Plaintiff in commerce on or about March 1982.

3 34. Customers for Plaintiff's products as sold through its distributors are identical
4 or similar to the customers for the herbal products sold by Defendants in a same or similar
5 market and in the same or similar channels of commerce.

6 35. A likelihood of confusion exists between the Defendants' use of their
7 infringing trademarks and Plaintiff's use of its registered, incontestable trademark, and the
8 Defendants' use is likely to cause confusion and mistake.

9 36. Defendants have continued to use their infringing trademarks after actual
10 notice of Plaintiff's prior and superior rights under Plaintiff's registration and prior use, as
11 provided under 15 USC § 1072. (Exhibit B.)

12 37. Plaintiff has suffered and will continue to suffer economic damages, and
13 irreparable injury as a result of the Defendants' wrongful actions.

14 38. Defendants have violated and are violating 15 USC § 1114(1), and Plaintiff is
15 entitled to all remedies for such violation, as set forth in 15 USC §§ 1116, 1117 and 1125.

16 **COUNT II**
17 **LANHAM ACT - FALSE DESIGNATION**
18 **OF ORIGIN AND UNFAIR COMPETITION**

19 39. Plaintiff incorporates and realleges all prior paragraphs by reference as if fully
20 stated herein.

21 40. Defendants' use of the words and trademarks "Pure Herbs" and
22 "pureherbs.info" on and in connection with its herbal products infringes upon Plaintiff's
23 exclusive trademark rights in its registered trademark Pure Herbs, Ltd.[®] and common law
24 trademark Pure Herbs[™] in violation of 15 USC § 1125(a), in that the public is likely to be
25 confused, deceived or mistaken as to the source, origin or sponsorship of the Defendants'
26



1 products or to erroneously believe that the Defendants or their products are somehow
2 connected or affiliated with Plaintiff and its products.

3 41. Defendants' infringement of Plaintiff's trademarks is willful and deliberate
4 and was done with intent to reap the benefit of Plaintiff's goodwill, promotion, advertising
5 and marketing of Plaintiff's products and trademarks.

6 42. Despite being notified of its violation of Plaintiff's trademarks (Exhibit B),
7 Defendants continue to promote, manufacture, distribute and sell its products by using
8 Plaintiff's trademark and such actions are causing Plaintiff immediate and irreparable injury,
9 which may be difficult if not impossible to quantify.

10 43. As a result of Defendants' wrongful actions, Plaintiff is entitled to and seeks
11 all remedies available for such violation, as set forth in 15 USC §§ 1116, 1117 and 1125,
12 including without limitation, (a) injunctive relief; (b) an award of damages equal to three
13 times Defendants' profits from sales of the infringing goods or three times the actual damages
14 Plaintiff can prove; (c) transfer of Defendants' infringing domain name and url; and (d)
15 Plaintiff's reasonable attorney fees and costs incurred in bringing this action to protect its
16 trademark.

17 **COUNT III**
18 **COMMON LAW TRADEMARK DILUTION,**
19 **TRADEMARK INFRINGEMENT AND**
20 **UNFAIR COMPETITION**

21 44. Plaintiff incorporates and realleges all prior paragraphs by reference as if fully
22 stated herein.

23 45. Defendants' continued use of their infringing trademarks to promote the sale
24 of their herbal products will dilute the association of Plaintiff with Plaintiff's herbal products
25 offered now and in the future, and will diminish the distinctiveness, effectiveness and value of
26 Plaintiff's registered and common law trademarks.



1 46. By reason of the above, Defendants are liable for common law dilution of the
2 Plaintiff's trademark.

3 47. By reason of the above, Defendants are liable to Plaintiff for common law
4 trademark infringement and unfair competition.

5 48. Plaintiff has been damaged and irreparably injured as a result of Defendants'
6 wrongful actions.

7 **COUNT IV**
8 **BREACH OF THE ANTI-CYBERSQUATTING ACT**

9 49. Plaintiff incorporates and realleges all prior paragraphs by reference as if fully
10 stated herein.

11 50. Plaintiff is the owner of the federally registered trademark Pure Herbs, Ltd.®
12 and has been using its registered trademark and its common law trademark Pure Herbs™ in
13 commerce in connection with its products since 1982.

14 51. Plaintiff is the registrant, owner and user of the url and domain name
15 www.pureherbs.com since 1997 and has used its website at that internet address to promote
16 its products, trademarks, corporate identity and goodwill since that time.

17 52. On or about December 11, 2004, Defendants registered the url and domain
18 name www.pureherbs.info. Defendants currently use that domain name as the address for a
19 website that promotes products marketed under the name "Pure Herbs." (Exhibits D, E and F.)

20 53. Defendants' url and domain name are confusingly similar to Plaintiff's
21 legitimate and previously registered url and domain name, and to Plaintiff's registered and
22 common law trademarks.

23 54. Defendants registered their url and domain name in bad faith, as Defendants
24 had no legitimate right to use the words "Pure Herbs" as a trademark or website address,
25 given the Plaintiff's prior rights and usage.
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1 55. Plaintiff has been and will continue to be harmed by Defendants' use of the
2 url and domain name www.pureherbs.info.

3 56. Defendants have violated 15 USC § 1125(d) by their wrongful acts.

4 57. Plaintiff requests the Court order the transfer of the registration, ownership
5 and control of the url and domain name www.pureherbs.info from the Defendants to the
6 Plaintiff.

7
8 **COUNT V**
BREACH OF WASHINGTON'S CONSUMER PROTECTION ACT

9 58. Plaintiff incorporates and realleges all prior paragraphs by reference as if fully
10 stated herein.

11 59. Washington's Consumer Protection Act, RCW 19.86.020, prohibits unfair
12 methods of competition and unfair and deceptive acts or practices in the conduct of any trade
13 or commerce. Infringement of a trademark may give rise to a claim for relief under RCW
14 19.86 *et seq.*

15 60. The public interest is affected by unfair and deceptive practices that have the
16 tendency to deceive the consuming public.

17 61. Defendants' use of the trademarks "Pure Herbs" and/or "pureherbs.info" on
18 and in connection with the promotion, marketing and sale of Defendants' herbal products are
19 unfair and deceptive acts in commerce. Defendants' actions are likely to confuse members of
20 the public as to the source or origin of the products, given Plaintiff's federally registered
21 trademark Pure Herbs, Ltd.® and Plaintiff's long prior use of its registered and common law
22 trademarks in commerce, in connection with the same or similar herbal products in the same
23 or similar markets and trade channels.

24 62. Defendants' unfair and deceptive acts affect the public interest in being free
25 from confusion in the market place and in online internet sales and advertising portals
26 throughout Washington, the United States and North America.



1 63. Plaintiff is suffering and will continue to suffer financial harm, as well as
2 economic and other damage to its reputation and goodwill, if consumers and members of the
3 public and its own distributors and their customers are confused by Defendants' use of the
4 trademarks "Pure Herbs" or "pureherbs.info" on and/or in connection with Defendants' herbal
5 products.

6 64. Pursuant to RCW 19.86.090, Plaintiff is entitled to injunctive relief, actual
7 damages, treble damages up to \$10,000 and an award of its attorney fees and costs.

8 **REQUEST FOR INJUNCTIVE RELIEF**

9 65. Plaintiff incorporates and realleges all prior paragraphs by reference as if fully
10 stated herein.

11 66. Pursuant to 15 USC § 1116 and § 1125, RCW 19.86.090 and Fed. R. Civ. P.
12 65, this Court may grant Plaintiff injunctive relief to prevent further harm to Plaintiff and to
13 avoid further confusion by members of the general public, consumers, buyers, the industry
14 professionals, and Plaintiff's own distributors.

15 67. Plaintiff requests that this Court enter an Order preventing and prohibiting
16 Defendants and any affiliated corporation, limited liability company, partnership, person
17 and/or entity from using the infringing trademarks "Pure Herbs" or "pureherbs.info" in any
18 form, on or in connection with any of its herbal products, including on the actual product, the
19 packaging, bottles, containers, invoicing, marketing or promotion materials, press releases,
20 product descriptions, product displays, advertisements, domain names, urls, and/or in the
21 metadata or keywords associated with any online marketing, website promotion or sale of its
22 products.

23 68. Plaintiff further requests that this Court enter an Order directing the registrar
24 of the domain name www.pureherbs.info to transfer the registration from Defendants to
25 Plaintiff.
26

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Pure Herbs, Ltd. prays that this Court grant the following relief:

1. Preliminarily and permanently enjoin Defendants from using the “Pure Herbs” or “pureherbs.info” trademarks, or any variations thereof, in any way in connection with their operations or business including, without limitation, any internet and/or website promotion or in connection with any marketing, advertising, packaging, bottles, containers, product labels, invoices, checks, letterhead, websites, domain names, urls or any other materials;

2. Direct Defendants to remove all reference to “Pure Herbs” or “pureherbs.info” from all of their marketing, sales, informational, diagnostic and/or promotional materials, product labels, letterhead or website materials and to discontinue any and all uses that could be identified or confused in any way with Plaintiff or Plaintiff’s name, image or trademarks;

3. Direct Defendants to withdraw and recall from any and all channels of distribution, any packaging, bottles, products, containers, labels, advertising or other materials distributed by them bearing any description or representation of the infringing marks, in violation of 15 USC § 1501 *et seq.*;

4. Order the impoundment and/or destruction of all of Defendants’ products, bottles, containers, labels, marketing and/or promotional materials and the like that infringe any of Plaintiff’s trademark rights or are likely to cause confusion with Plaintiff’s products;

5. Order the registrar of the domain name www.pureherbs.info to transfer the ownership and control of said url and domain name to Plaintiff;

6. Direct Defendants to file with this Court and serve on counsel for Plaintiff within thirty (30) days after entry of any injunction issued by this Court a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the injunction, as provided for by 15 USC § 1116;



1 7. Require Defendants to account for, disgorge and pay over to Plaintiff all
2 revenues and profits derived from the wrongful use of Plaintiff's trademark as provided for by
3 15 USC § 1117.

4 8. Award Plaintiff its damages sustained by reasons of these actions, such
5 damages to be trebled in accordance with 15 USC § 1117;

6 9. Award Plaintiff all compensatory, general, and special damages sustained by
7 Plaintiff by way of Defendants' acts of trademark infringement, unfair competition and
8 consumer protection violations, in an amount to be determined at trial, and for treble damages
9 up to \$10,000, pursuant to RCW 19.86.090;

10 10. Award Plaintiff its attorney fees and costs in this action as provided by 15 USC
11 § 1117 and RCW 19.86.090;

12 11. Award Plaintiff prejudgment interest on the foregoing sums; and

13 12. Award such other and further relief as the Court deems appropriate under the
14 circumstances.

15 DATED this 11th day of March, 2010.

16 RYAN, SWANSON & CLEVELAND, PLLC

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